

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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CALEDONIAN-RECORD PUBLISHING)
COMPANY, INC.)
Plaintiff)

v.)

KEN WELLS, HORIZON VERMONT)
PUBLICATIONS, INC., d/b/a THE)
NEWPORT DAILY EXPRESS, and)
HORIZON PUBLICATIONS, INC.,)
Defendants)

Docket No. 2:17-CV-206

COMPLAINT AND JURY DEMAND

Jurisdiction and Venue

1. This is an action for damages and other relief, including reasonable attorney's fees, brought under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 *et seq.* ("RICO"), and Vermont state law. Federal jurisdiction is available under 18 U.S.C. § 1964(c) and 28 U.S.C. §§ 1331 and 1367(a). Venue is proper under 18 U.S.C. § 1965(a) since at least one Defendant resides, is found, has an agent, or transacts his or its affairs in this District. Venue is also proper under 28 U.S.C. § 1391(2), since a substantial part of the events giving rise to Plaintiff's claims occurred here.

Parties

2. Plaintiff Caledonian-Record Publishing Company, Inc. ("Caledonian-Record") is a Vermont corporation with its principal place of business in St. Johnsbury, Vermont. It is the publisher of the Caledonian-Record, a family-owned, independent daily newspaper serving six

counties in northeastern Vermont and northern New Hampshire. It is published six days a week and was founded in 1837.

3. Defendant Ken Wells is a resident of Orleans, Vermont. Mr. Wells was the editor of the Newport Daily Express, and an employee of Defendant Horizon Vermont Publications, Inc. until November, 2016.

4. Defendant Horizon Vermont Publications, Inc. ("Horizon Vermont") is a Delaware corporation with corporate offices in Marion, Illinois. Horizon Vermont does business as and publishes The Newport Daily Express, a daily newspaper which circulates in the same general area as the Caledonian-Record and is one of its competitors.

5. Defendant Horizon Vermont Publications, Inc., is owned by Defendant Horizon Publications, Inc. ("Horizon Illinois"), a Delaware corporation which also has corporate offices in Marion, Illinois, and owns a number of newspapers across the country.

Factual Allegations

6. Plaintiff Caledonian-Record subscribes to a wire service provided by the Associated Press, a news co-operative. The Associated Press provides news, photographs and videos, depending on which package the subscriber chooses.

7. A subscriber's access to the Associated Press is provided electronically, through user names and passwords.

8. At all times material to this action, Plaintiff Caledonian-Record has subscribed to an Associated Press package which provides both news and photographs. That package costs approximately \$45,000 per year, \$20,000 more than a package which provides only news without photographs.

COUNT I
Conversion

9. In 2012, upon information and belief, Defendants Ken Wells and Horizon Vermont improperly and without authority obtained Plaintiff Caledonian-Record's password for its Associated Press subscription. Unbeknownst to Plaintiff, Defendants then used the password to access the Caledonian-Record's subscription at the Associated Press from 2012 through 2016.

10. From 2012 through 2016, Defendant Horizon Vermont downloaded more than 680 photographs from the Associated Press through the subscription bought and paid for by Plaintiff. A list of such photographs and the date each was downloaded is attached as Ex. 1. On information and belief, Horizon Vermont published many or all of the photographs in the Newport Daily Express.

11. Defendant Horizon Vermont negligently and intentionally converted to its own use, without permission, content from the Plaintiff's Associated Press subscription.

12. On information and belief, Defendant Horizon Illinois supervises the operations of Horizon Vermont. On information and belief, it either knew or should have known that Horizon Vermont was obtaining pictures from the Associated Press through the improper use of the Caledonian-Record's subscription.

COUNT II
Unfair Business Competition

13. Defendants intended to and did obtain an unfair business advantage over Plaintiff by misappropriating and publishing Associated Press photographs through the Associated Press subscription which Plaintiff paid for but which Defendants did not.

14. In addition to misappropriating Associated Press photographs, upon information and belief, Defendants consistently have and continue to misrepresent their circulation to

advertisers, including but not limited to Northpoint Chrysler Dodge Jeep Ram; the Autosaver Group; and The Pick & Shovel. Defendants have misrepresented to these advertisers that their circulation is 4500. Upon information and belief, based upon Plaintiff having printed the newspaper on several occasions at Defendants' request, the circulation of the Newport Daily Express is not greater than 1500.

15. Such misrepresentations have caused advertisers to place advertisements with the Newport Daily Express, which they otherwise would have placed with Plaintiff.

COUNT III
Racketeer Influenced and Corrupt Organizations

16. Defendant Ken Wells is a "person" within the meaning of 18 U.S.C. § 1961(3). Defendant Wells was employed by Horizon Vermont as the editor of the Newport Daily Express at all material times.

17. Defendant Horizon Vermont is an "enterprise" within the meaning of 18 U.S.C. § 1961(4) which is engaged in interstate commerce and whose activities affect interstate commerce.

18. Defendant Ken Wells conducted and participated in the affairs of Horizon Vermont through multiple acts of racketeering within the meaning of 18 U.S.C. § 1961(1), including the following:

- a. the willful distribution, by means of publication in the Newport Daily Express, of more than 10 copies of a copyrighted work within 180 days for purposes of commercial advantage, in violation of 17 U.S.C. § 506(a) and 18 U.S.C. § 2319. In fact, Defendant Wells downloaded or had others at Horizon Vermont download more than 600 copyrighted photographs from

2013-16 by using Plaintiff's Associated Press password without Plaintiff's knowledge or authorization. Many or all such photographs were published in the Newport Daily Express;

- b. the formation and carrying out of a fraudulent scheme to obtain copyrighted material from the Associated Press, to which the Newport Daily Express had not subscribed and to which it was not entitled, by secretly using Plaintiff's password, and the use of interstate wire facilities in furtherance of that scheme on more than 600 occasions, in violation of 18 U.S.C. § 1343; and
- c. the formation and carrying out of a fraudulent scheme to misrepresent the circulation of the Newport Daily Express to advertisers, and the use of interstate wire facilities and interstate mail facilities in furtherance of the scheme, in violation of 18 U.S.C. §§ 1341 and 1343.

19. The acts of copyright infringement described in paragraph 15 constitute "a pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5), in that such acts were all accomplished by the same method and extended over a four-year period. The fraudulent misrepresentations as to circulation also constitute "a pattern of racketeering activity," in that the same or similar misrepresentations were repeatedly made to a number of advertisers over a period of years. Both the copyright infringements and fraudulent misrepresentations amounted to a regular way of doing business for Wells and Horizon Vermont.

20. The conduct of Defendants Ken Wells and Horizon Vermont resulted in injury to Plaintiff's business. But for such conduct, Plaintiff would have sold additional newspapers and additional advertising.

21. Defendant Horizon Illinois participated in the operation and management of Horizon Vermont at all relevant times, and it benefitted financially from the wrongful conduct of Defendants Wells and Horizon Vermont.

Relief

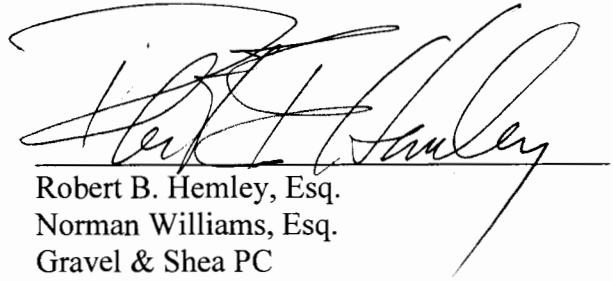
Plaintiff respectfully requests judgment in its favor and the following relief:

1. A permanent injunction prohibiting Defendants from improperly accessing Plaintiff's account at the Associated Press and misrepresenting the circulation of the Newport Daily Express.
2. An order requiring Defendants to reimburse Plaintiff for the cost of the Associated Press subscription which entitled Plaintiff to access the copyrighted photographs which Defendants misappropriated and published.
3. An order requiring Defendants to disgorge all profits obtained as a result of their illegal activities.
4. Under 18 U.S.C. § 1964, treble damages and the costs of suit, including reasonable attorney's fees.

JURY DEMAND

Plaintiff demands trial by jury of all issues so triable.

Dated: Burlington, Vermont
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